

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 282 OF 2015**

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 200 OF 2015

Abilities Infrastructure Private

.....Petitioner/First Transferor Company

AND

COMPANY SCHEME PETITION NO.283 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.201 OF 2015

Hi Skill Investment Consultancy Private Limited

.....Petitioner/Second Transferor Company

AND

COMPANY SCHEME PETITION NO.284 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.202 OF 2015

Esskay Properties And Investments Private Limited

... Petitioner/Transferee Company

In the matter of the Companies Act, 1956/2013

AND

In the matter of application under Sections 391 to 394 of
the Companies Act, 1956.

AND

In the matter of Scheme of Amalgamation

Of

Abilities Infrastructure Private Limited,

And

Hi Skill Investment Consultancy Private Limited,

With

Esskay Properties And Investments Private Limited

Called for Hearing

Mr. NaserAli Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioners.

R.C. Master i/b. Mr. A.A. Ansari for Regional Director in the Petitions.

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: S. C. GUPTE, J

DATE: 31st July, 2015

PC:

1. Heard learned counsel for parties. No objector has come to oppose the Scheme nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to an arrangement embodied in the Scheme of Amalgamation of Abilities Infrastructure Private Limited and Hi Skill Investment Consultancy Private Limited with Esskay Properties And Investments Private Limited.
3. The learned Advocate for the Petitioner Companies states that the First and Second Transferor Companies are presently not engaged in much business activity and the Transferee Company is engaged in the business of developing of buildings and is temporarily earning other income in the form of rentals.

4. The learned Advocate for the Petitioner Companies further states that the Scheme of Amalgamation would achieve integration of the business operations which are of similar strategic flexibility and a scale to pursue growth opportunities, minimize cost and administrative hassle of maintaining the combined entity will be able to showcase its strength and there will also be synergy benefits through combined operations and cost efficiencies and conducive to better and more efficient and economical control and conduct of the Companies.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the respective Company Scheme Petition.
6. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.
7. The Learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 9th July, 2015 stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
9. The Regional Director has filed his Affidavit on 23rd July, 2015, *inter alia*, stating therein that save and except as stated in paragraphs 6 (a) & 6(b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) & 6(b) of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

- a) It is respectfully submitted that the tax implication, if any, arising out of the scheme shall be subject to final decision of Income Tax Authority. The approval of the scheme by Hon’ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- b) Clause 13.1 of the Scheme provides for insertion of new object clause in the Memorandum of Association of the Transferee Company to carry on the business of the Transferor Companies. In this regard, the Transferee Company may be directed to pass necessary resolution for the amendment of the object clause and it may further be directed to pass necessary resolution for amendment of the*

object clause and it may further be directed to comply with the provisions of Section 13(1)& (6) read with Section 15 of Companies Act, 2013 corresponding to Section 40 read with Section 18 of Companies Act 1956 and to file amended copy of the Memorandum of Association with necessary form with registrar of Companies.”

10. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Petitioner Companies submit that the Petitioners are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, the Petitioner / Transferee Company undertakes to comply with provisions of Section 13(1) & (6) read with Section 15 of Companies Act, 2013 corresponding to Section 40 read with Section 18 of Companies Act 1956 and to file amended copy of the Memorandum of Association with necessary E-Form – MGT-14 with registrar of Companies. The said undertaking is accepted.
12. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.282 and 283 of 2015 filed by the Transferor Companies and Company Scheme Petition No.284 of 2015 filed by the Transferee Company are made absolute in terms of prayer clauses (a) & (b).
15. The Petitioner Companies to lodge a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of this order.
16. Petitioner is directed to file/lodge a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956/ 2013, whichever is applicable.
17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in Company Scheme Petition Nos.282 and 283 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

18. Filing and issuance of the drawn up order is dispensed with.

19. All concerned regulatory authorities to act on copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. GUPTE, J.)